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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOEL PAUL REESMAN,

9 Petitioner,

10 v.

11 RON HAYNES,

12 Respondent.

CASE NO. C16-5925 BHS

ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION AND
REMANDING

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 23), and
15 Petitioner Joel Paul Reesman’s (“Reesman”) objections to the R&R (Dkt. 24).

16 On August 31, 2017, Judge Fricke issued the R&R recommending that the Court
17 dismiss the petition as time-barred. Dkt. 23. On September 11, 2017, Reesman filed
18 objections asserting numerous arguments, including that he is actually innocent. Dkt. 24
19 at 1–2.

20 The district judge must determine de novo any part of the magistrate judge’s
21 disposition that has been properly objected to. The district judge may accept, reject, or
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1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Reesman's actual innocence claim has not been fully briefed or
4 considered. Although the Government identified the claim in its motion to dismiss, it did
5 not address the actual innocence exception to the statute of limitations. *See* Dkt. 15.
6 Reesman raised the argument in his response, Dkt. 22 at 4–7, and the Government did not
7 file a reply. Thus, Reesman has raised an exception to a time-barred petition, which has
8 not been responded to or otherwise considered. Therefore, the Court **DECLINES** to
9 adopt the R&R and **REMANDS** for further consideration.

10 **IT IS SO ORDERED.**

11 Dated this 19th day of October, 2017.

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14 BENJAMIN H. SETTLE
United States District Judge